No. 95-1352

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

GARY EDWARDS and TANA WOOD,

Petitioners,

v.

JERRY B. BALISOK,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, AND NORMAN GOTCHER, JR., AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of nearly 300,000 members, dedicated to preserving and protecting the Bill of Rights. The American Civil Liberties Union of Washington is one of the ACLU's state affiliates. The ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners. Thus, the ACLU has a particular interest in the remedies available to prisoners for deprivations of liberty without due process of law.

The National Legal Aid and Defender Association (NLADA) is the largest national organization devoting all of its resources to ensuring equal access to the justice system for all poor people, including those in our Nation's prisons. NLADA's Institutions and Alternatives Section was established in 1991 to better inform and coordinate advocacy on behalf of persons in prisons and other institutions and to protect the rights of institutionalized persons.

Norman Gotcher, Jr., is a citizen of Washington who was, until 1995, a prisoner in the Washington Department of Corrections. While incarcerated, he brought a due process challenge, under 42 U.S.C. § 1983, to prison disciplinary procedures which resulted in his loss of good time credits. The district court dismissed his complaint, but the court of appeals reversed and remanded for further proceedings. *Gotcher v. Wood*, 66 F.3d 1097, 1098-99 (9th Cir. 1995). The State of Washington sought certiorari; the petition is currently pending before this Court. *Wood v. Gotcher*, No. 95-1385. The petition in *Gotcher* raises issues

similar to those before the Court in the instant case. Therefore, Mr. Gotcher has a strong interest in the Court's resolution of this case.

The parties have agreed to the filing of this brief, as indicated by their letters of consent filed with the Clerk of this Court.

STATEMENT OF THE CASE

Respondent Jerry B. Balisok, a prisoner at the Washington State Penitentiary at Walla Walla, filed this action in the district court under 42 U.S.C. § 1983. He alleged that he was subjected to a prison disciplinary proceeding which resulted in the loss of good time credits and other sanctions, and which did not comply with the requirements of the Due Process Clause of the Fourteenth Amendment. Appendix to Petition for Writ of Certiorari (hereinafter "Pet. App.") at I-2, I-6.[1] Respondent sought a declaration that he had been subjected to unconstitutional disciplinary procedures, an order prospectively enjoining such procedures, and "compensatory and punitive damages for the harm sustained from the use of unconstitutional procedures." He did not seek restoration of his good time credits. *Id.* at I-10.

[1] More specifically, respondent alleged that petitioner Edwards, a prison administrator, interfered with his ability to collect and present exculpatory evidence. Pet. App. at I-3 – I-7. He further alleged that prison officials habitually engaged in such interference with regard to prisoners who, like respondent, are "jail house attorneys." *Id.* at I-4.

The district court stayed the action and certified the case for immediate appeal. Pet. App. at F-14 – F-15. The district court found that if "the disciplinary hearing at issue did violate [respondent's] due process rights, it would necessarily follow that the resulting sanctions, including the loss of good-time credit, were also unconstitutional and invalid." *Id.* at F-11. Relying on this Court's decision in *Heck v. Humphrey*, 114 S. Ct. 2364 (1994), the district court concluded that "the appropriate procedure is to stay [respondent's] § 1983 action pending resolution of the good-time claim in state courts." Pet. App. at F-14.

Both parties appealed, and the court of appeals reversed the district court's order staying the action and remanded for further proceedings. Joint Appendix (hereinafter "J.A.") at 9-10. The court of appeals relied on its recent decision in *Gotcher v. Wood*, 66 F.3d 1097 (9th Cir. 1995), in which it had held that "an inmate's challenge to the procedure by which he was denied good-time credits did not call into question the lawfulness of his continuing confinement and was not barred by *Heck v. Humphrey*." J.A. at 10.

The petitioners sought certiorari, and this Court granted the writ on April 29, 1996.

SUMMARY OF ARGUMENT

In *Heck v. Humphrey*, 114 S. Ct. 2364 (1994), this Court held that a state prisoner cannot bring a damages action under 42 U.S.C. § 1983 for constitutional violations leading to his conviction, if success in that action would

necessarily imply the invalidity of his outstanding criminal conviction. The Court in *Heck* also reaffirmed its holding in *Wolff v. McDonnell*, 418 U.S. 539 (1974), that a prisoner may bring a damages action for use of unconstitutional prison disciplinary procedures in depriving him of good time credits, if the unconstitutionality of those procedures does not necessarily vitiate the denial of good time, and the action therefore does not call into question the lawfulness of the prisoner's continuing confinement.

The courts of appeals have uniformly followed *Heck* and held that a prisoner may not bring a § 1983 damages action for wrongful disciplinary procedures if success in that action would necessarily result in restoration of the prisoner's good time. Conversely, if the claim is simply for using the wrong procedures, and does not necessarily implicate the loss of good time, the action may proceed under § 1983. This was the rule applied by the court of appeals below.

Petitioners propose a radically new rule that would require this Court to abandon both *Heck* and *Wolff*. Petitioners' proposed rule is unintelligible and would defy easy or consistent application in the lower courts. It is unsupported by either the language or the legislative history of § 1983 or 28 U.S.C. § 2254. Petitioners' arguments in support of their proposed rule are policy arguments about the optimal scope of § 1983, and are properly addressed to Congress rather than this Court.

The Court should decline petitioners' invitation to abandon *Heck* and *Wolff*. It should hold, consistent with those cases, that a state prisoner may bring an action

under § 1983 for a deprivation of procedural due process in a prison disciplinary proceeding, as long as success in that action would not necessarily result in restoration of good time credits taken in that proceeding. It should then affirm the judgment of the court of appeals, because respondent's success in his § 1983 action would not necessarily result in restoration of his good time.

A fortiori, a former state prisoner who has completed his sentence, like amicus Gotcher, may directly seek damages under § 1983 for wrongful deprivation of good time credits, since the restoration of good time cannot possibly result from the § 1983 action. Because such a person is not in custody, and therefore cannot invoke federal habeas corpus jurisdiction to seek restoration of his credits, damages under § 1983 are the only federal remedy for the violation of his federal constitutional rights. Absent the possibility of proceeding under the more specific habeas corpus statute, the plain language of § 1983 grants the former prisoner a cause of action for damages for wrongful deprivation of good time credits.

Finally, *Heck* left undisturbed *Wolff's* holding that a state prisoner may seek prospective injunctive relief from unconstitutional prison disciplinary procedures. A claim for such relief does not call into question the lawfulness of the plaintiff's continuing confinement.

ARGUMENT

I. THE COURT SHOULD NOT ABANDON THE TEST SET FORTH IN *HECK v. HUMPHREY*

A. The *Heck* Test.

In *Heck v. Humphrey*, 114 S. Ct. 2364 (1994), a state prisoner filed suit in federal court under 42 U.S.C. § 1983, alleging that police and prosecutors had committed various constitutional violations in the investigation and trial that ultimately led to his conviction of voluntary manslaughter. 114 S. Ct. at 2368. The complaint sought, among other relief, monetary damages; it did not seek injunctive relief or Heck's release from custody. *Id.*

This Court affirmed the dismissal of Heck's § 1983 complaint.

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his

> conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

114 S. Ct. at 2372 (footnote omitted, emphasis in original).[2]

The Court made clear that a plaintiff can still bring a § 1983 suit challenging unconstitutional procedures, if success in that action would not necessarily imply the invalidity of the plaintiff's conviction:

> [I]f the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

Id. at 2372-73 (footnotes omitted, emphasis in original). The Court gave an example of a § 1983 suit that would be permissible under the *Heck* rule:

> For example, a suit for damages attributable to an allegedly unreasonable search may lie even if the challenged search produced evidence that was introduced in a state criminal trial resulting

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[2] In *Heck*, the district court and the court of appeals had both characterized Heck's monetary claims as challenging the legality of his conviction. Heck had not disputed this characterization until he filed his reply brief in this Court. The Court declined to consider the untimely argument, and accepted the characterization of the lower courts, stating the issue before it as "whether money damages premised on an unlawful conviction could be pursued under § 1983." 114 S. Ct. at 2368 n. 2.

> in the § 1983 plaintiff's still-outstanding conviction. Because of doctrines like independent source and inevitable discovery, and especially harmless error, such a § 1983 action, even if successful, would not *necessarily* imply that the plaintiff's conviction was unlawful.

Heck, 114 S. Ct. at 2372 n. 7 (citations omitted, emphasis in original); *accord, id.* at 2379 n. 4 (Souter, J., concurring in the judgment).

The *Heck* Court also discussed, and reaffirmed, its holding in *Wolff v. McDonnell*, 418 U.S. 539 (1974). In *Wolff*, a Nebraska state prisoner, on behalf of himself and other prisoners, filed a complaint under § 1983, alleging that disciplinary proceedings that resulted in the taking of good time credits did not comply with the Due Process Clause of the Fourteenth Amendment. 418 U.S. at 542-43. The complaint sought restoration of good time; submission of a plan by prison authorities for a hearing procedure in connection with forfeiture of good time that complied with the requirements of due process; and damages for deprivation of civil rights resulting from use of the allegedly unconstitutional procedures. *Id.* at 553.

The Court held that the claim for restoration of good time credits was foreclosed by *Preiser v. Rodriguez*, 411 U.S. 475 (1973).[3] However, it held that the damages claim was "properly before the District Court and required determination of the validity of the procedures employed

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[3] *Preiser* held that when a prisoner seeks restoration of good time credits, and therefore challenges the fact or duration of his confinement, his sole federal remedy is a writ of habeas corpus. 411 U.S. at 500.

for imposing sanctions, including loss of good time." *Wolff*, 418 U.S. at 554.

The *Heck* Court characterized *Wolff* as follows:

> [W]e think this passage recognized a § 1983 claim for using the wrong procedures, not for reaching the wrong result (i.e., denying good-time credits). Nor is there any indication in the opinion, or any reason to believe, that using the wrong procedures necessarily vitiated the denial of good-time credits. Thus, the claim at issue in *Wolff* did *not* call into question the lawfulness of the plaintiff's continuing confinement.

Heck, 114 S. Ct. at 2370 (emphasis in original).

B. Petitioners' Proposed Rule Would Require This Court to Abandon *Heck* and *Wolff*.

Heck, read in conjunction with *Preiser* and *Wolff*, suggests that a prisoner may not bring a § 1983 damages action for unconstitutional disciplinary procedures when that action, if successful, would *necessarily* result in restoration of the prisoner's good time. Conversely, when the claim is "for using the wrong procedures, not for reaching the wrong result (i.e., denying good-time credits)," the claim does not "call into question the lawfulness of the plaintiff's continuing confinement," *see Heck*, 114 S. Ct. at 2370, and the action may proceed under § 1983. This is the rule the courts of appeals have applied uniformly and without difficulty since *Heck*. *Miller v. Indiana Department of Corrections*, 75 F.3d 330, 331 (7th Cir. 1996);

Armento-Bey v. Harper, 68 F.3d 215, 216 (8th Cir. 1995); *Gotcher v. Wood*, 66 F.3d 1097, 1099 (9th Cir. 1995).[4]

Nevertheless, petitioners urge this Court to reject this straightforward test, and instead advocate a rule that would require the abandonment of both *Heck* and *Wolff*. Petitioners would have federal courts disregard as irrelevant the very issue this Court identified as decisive in *Heck*: whether success on the § 1983 claim would *necessarily* invalidate the prisoner's continuing confinement. *Compare Heck*, 114 S. Ct. at 2372 ("the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence") *with* Brief of Petitioners at 24 ("[t]he bright-line rule can be applied . . . without the need to resolve troublesome 'fact-bound issue[s]' such as whether the claim would necessarily invalidate the result of the hearing").[5]

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[4] The ease and consistency with which the courts of appeals have applied this test belies the unsupported contention of the State of California, *et al.* (hereinafter "state amici") that "the distinction between a challenge to procedure and a challenge to a result does not provide a workable rule." Brief of State Amici at 16-17.

[5] Petitioners' assertion elsewhere in their brief that their proposed "bright-line rule" is consistent with *Heck* (Brief of Petitioners at 28 n. 19) is untenable in light of this language. Similarly, petitioners' contention that an attack on disciplinary procedures is equivalent to an attack on the substantive result of those procedures, Brief of Petitioners at 17, cannot be reconciled with the holding of *Wolff*, recently reaffirmed in *Heck*. *See* 114 S. Ct. at 2370.

Petitioners propose that:

> exhaustion of state remedies should be required whenever the prisoner's allegations, no matter what relief is requested, could also support a claim for restoration of good-time credits lost at a prison disciplinary hearing.

Brief of Petitioners at 7. Although petitioners characterize this as a "bright-line rule," *id.*, it is clear that such a rule would defy easy, consistent, or even intelligible application.[6]

Under *Heck*, the district court simply examines the relief sought by the § 1983 plaintiff, and determines whether this relief, if granted, would "necessarily" result in restoration of good time. *See* 114 S. Ct. at 2372.[7] Under petitioners' proposed rule, by contrast, the district court must embark on a speculative voyage that has no end. To

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[6] Indeed, petitioners are apparently unable even to state their proposed rule in a consistent fashion. In addition to the "could also support a claim" language quoted above, petitioners variously phrase their rule as follows: "could state a claim" (Brief of Petitioners at 8); "would state a claim" (*id.* at 17); and "would support a claim" (*id.* at 24). It is obvious that "would" and "could" are not synonyms; nor are the terms "state a claim" and "support a claim."

[7] Petitioners' fear that application of the *Heck* rule "gives prisoners, rather than courts, the power to decide questions of federal court jurisdiction," Brief of Petitioners at 19, is unfounded. This Court has long recognized that it is the essence of the claim, not the label placed upon it by the prisoner-plaintiff, that determines the availability of federal judicial relief. *See Preiser*, 411 U.S. at 489-90.

determine whether, "no matter what relief is requested," the plaintiff's allegations "could also support" a claim for restoration of good time – for example, in some future state proceeding – the district court would have to explore complex issues of state law such as *res judicata* and statutes of limitations, as well as substantive and procedural state law governing loss of good time credits. This hardly represents a gain in clarity and simplicity over the *Heck* rule.

Petitioners identify no reason why the *Heck* test, announced only two years ago, should now be abandoned. Indeed, in *Heck* itself, the Court considered, and rejected, a test similar to that now advocated by petitioners. *Compare Heck,* 114 S. Ct. at 2373, *with* Brief of Petitioners at 24.

The state amici join petitioners in urging the overthrow of *Wolff* and *Heck,* but go even further, urging that "habeas corpus is the proper remedy for all procedural o[r] substantive due process claims filed by prisoners challenging administrative decisions, not just those involving credit losses." Brief of State Amici at 13 n. 8. Of course, this Court rejected such a rule two Terms ago when, in *Heck,* it reaffirmed *Wolff's* holding that a prisoner may bring a § 1983 action "for using the wrong [disciplinary] procedures, not for reaching the wrong result." 114 S. Ct. at 2370.[8]

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[8] Last Term, this Court again implicitly rejected the rule proposed by state amici. In *Sandin v. Conner,* 115 S. Ct. 2293 (1995), the prisoner was convicted of disciplinary infractions, and sentenced to disciplinary segregation. 115 S. Ct. at 2296. Before his administrative appeal was decided, Conner filed a § 1983 action in federal court, alleging a deprivation of procedural due process in connection with his disciplinary hearing. *Id.*

Under the rule proposed by state amici, Conner would have had no cause of action under § 1983. However, no Member of the *Conner* Court questioned the propriety of a § 1983 action as a vehicle for challenging a deprivation of procedural due process in a prison disciplinary hearing.

The rule proposed by the state amici completely ignores the nature and historical function of habeas corpus. "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser,* 411 U.S. at 484. Thus, a prisoner challenging a disciplinary proceeding that does not affect the length of his custody simply has no remedy in habeas corpus and therefore, under the rule proposed by state amici, has no remedy at all. "If the prisoner is not challenging the validity of his conviction or the length of his detention, such as loss of good time, then a writ of habeas corpus is not the proper remedy." *Kruger v. Erickson,* 77 F.3d 1071, 1073 (8th Cir. 1996).[9]

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[9] Petitioners' assertion that "the purpose of due process at a prison disciplinary hearing is to prevent the arbitrary or unjustified denial of good-time credits," Brief of Petitioners at 8, 17, is incorrect. As petitioners themselves concede, violation of Washington's prison disciplinary code "can result in a number of sanctions, including a loss of good-time credits." *Id.* at 3. In reality, prison disciplinary proceedings result in a wide variety of outcomes, most of which have no bearing on the length of the prisoner's confinement. *See* Wash. Admin. Code § 137-28-350(1) (enumerating possible sanctions for a serious infraction, including "[c]onfinement on segregation status" and "[c]onfinement on isolation status"). It is clear that habeas corpus will not be available as a remedy for procedural due

C. Petitioners Ask This Court to Narrow the Scope of § 1983 for Policy Reasons, A Decision That Properly Belongs to Congress.

Petitioners and state amici do not argue that their position is supported by the language or legislative history of either § 1983 or § 2254. Rather, they start with the proposition that prisoners should, as a matter of sound public policy, be required to exhaust state remedies before seeking relief in federal court. Therefore, they argue, this Court should bar prisoners from challenging unconstitutional disciplinary procedures under § 1983, since that statute contains no exhaustion requirement.[10] *See, e.g.*, Brief of Petitioners at 19-24; Brief of State Amici at 10-11, 20-21.

Such arguments amount to an invitation to this Court to usurp the legislative function of Congress, and have been consistently rejected by the Court. "It is not our province to alter the balance struck by Congress in establishing the procedural framework for bringing actions under § 1983." *Patsy v. Board of Regents*, 457 U.S. 496, 512

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process violations in these situations. "[P]risoners who challenge disciplinary rulings that do not lengthen their sentence are probably outside the habeas statute[.]" *Sheldon v. Hundley*, 83 F.3d 231, 234 (8th Cir. 1996).

[10] Any suggestion that § 1983 is or should be subject to an exhaustion requirement is foreclosed by *Heck*, which reaffirmed that, with specific statutory exceptions, it is not. 114 S. Ct. at 2370. Therefore, if respondent's claim is cognizable under § 1983, exhaustion is not required, except as required by statute.

(1982). *See also Tower v. Glover*, 467 U.S. 914, 922-23 (1984).[11]

Indeed, the arguments of petitioners and the state amici in this case are remarkably similar to those unsuccessfully made by the state defendant in *Patsy*, urging that § 1983 should be subject to an exhaustion requirement:

> Respondent and the Court of Appeals argue that exhaustion of administrative remedies should be required because it would further various policies. They argue that an exhaustion requirement would lessen the perceived burden that § 1983 actions impose on federal courts; would further the goal of comity and improve federal-state relations by postponing federal-court review until after the state administrative agency had passed on the issue; and would enable the agency, which presumably has expertise in the area at issue, to enlighten the federal court's ultimate decision.

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[11] Congress is capable of restricting recourse to § 1983 by state prisoners when it sees fit to do so. In 1980, Congress enacted the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 *et seq.* As originally enacted, CRIPA permitted courts to require adult convicted prisoners to exhaust administrative remedies before bringing a § 1983 action, if such administrative remedies met minimum standards promulgated by the Attorney General of the United States. 42 U.S.C. § 1997e(a); *see also Patsy*, 457 U.S. at 507-11. In 1994, CRIPA was amended by Congress to permit courts to require exhaustion if administrative remedies are "otherwise fair and effective," even if they do not meet the federal minimum standards. 42 U.S.C. § 1997e(a)(2); Pub. L. 103-322, § 20416(a)(1)(B). The Prison Litigation Reform Act of 1995, Pub. L. 104-134, further restricts the availability of § 1983 to prisoners.

> As we noted earlier, policy considerations alone cannot justify judicially imposed exhaustion unless exhaustion is consistent with congressional intent. Furthermore, . . . the relevant policy considerations do not invariably point in one direction, and there is vehement disagreement over the validity of the assumptions underlying many of them. The very difficulty of these policy considerations, and Congress' superior institutional competence to pursue this debate, suggest that legislative not judicial solutions are preferable.

Patsy, 457 U.S. at 512-13 (citations, footnotes omitted). *Compare, e.g.*, Brief of State Amici at 20-21.[12]

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[12] Petitioners' reasoning repeatedly begs the question. For example, petitioners criticize the decision in *Gotcher v. Wood*, 66 F.3d 1097 (9th Cir. 1995), on the ground that it "leads to results that are at odds with the exhaustion requirement." Brief of Petitioners at 19. Of course, the very question before this Court is whether such an "exhaustion requirement" exists – or more precisely, whether respondent's only federal remedy is habeas corpus, which, unlike § 1983, contains an exhaustion requirement.

Petitioners' policy arguments are not only made in the wrong forum; they are also internally inconsistent. For example, petitioners' concern for "unsophisticated pro se litigants" who will "languish in civil rights actions merely because they failed to clearly specify their claim for freedom from an unlawful confinement," Brief of Petitioners at 22, is difficult to reconcile with petitioners' assurance that "[f]ederal courts are well versed in reviewing prisoner complaints" and "are not limited by the relief expressly sought in the complaint." *Id.* at 24.

D. The Remaining Arguments of Petitioners and State Amici Are Unpersuasive.

Petitioners' reliance on 42 U.S.C. § 1988 (*see* Brief of Petitioners at 25-26) is wholly misplaced. That statute governs the choice of federal versus state law in federal civil rights actions. *See Robertson v. Wegmann*, 436 U.S. 584, 588 (1978); *Moor v. County of Alameda*, 411 U.S. 693, 705-06 (1973). In no way does it "provide[] additional authority for federal courts to define the principles of exhaustion" (*see* Brief of Petitioners at 25) that petitioners believe should apply to prisoner civil rights suits.

Similarly, petitioners incorrectly argue that "[d]octrines of abstention provide additional support for the importance of exhaustion in this case." Brief of Petitioners at 15 n. 7. As this Court recognized in *Heck*, the appropriateness of abstention is a separate question that arises only after a determination that the action is proper under § 1983. *See* 114 S. Ct. at 2272-73 and n. 8.

Finally, the state amici argue essentially that the federal courts can safely close their doors to state prisoners, since state institutions can be relied upon scrupulously to protect their rights. *See* Brief of State Amici at 11, 12 n. 7.[13] Unfortunately, this is too often not the case. *See, e.g., Hudson v. McMillian*, 503 U.S. 1, 4, 12 (1992) (two correctional officers punched and kicked a handcuffed and shackled prisoner while their supervisor looked on and

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[13] The arguments about the alleged efficacy of state remedies are difficult to evaluate, since they consist mostly of factual assertions unsupported by any citation to authority. *See* Brief of State Amici at 9-10, nn. 4, 5, 6.

told them "not to have too much fun;" trial court found that this was "not an isolated assault"); *Madrid v. Gomez*, 889 F. Supp. 1146, 1280-81 (N.D. Cal. 1995) (finding "senseless suffering and sometimes wretched misery" caused by unconstitutional practices of California prison officials, and further finding that officials had "no serious or genuine commitment to significantly improving" such conditions).[14]

E. This Court Should Affirm the Judgment Below.

In sum, this Court should decline petitioners' invitation to abandon *Heck* a mere two years after it was decided. The Court should hold, consistent with *Heck*, that a state prisoner may bring an action under § 1983 for a deprivation of procedural due process in a prison disciplinary proceeding, as long as success in that action would not necessarily result in restoration of good time credits taken in that proceeding. The Court should then affirm the judgment of the court of appeals, because respondent's success in his action for unconstitutional procedures would not necessarily result in restoration of his good time credits. *See Heck*, 114 S. Ct. at 2372 n. 7.[15]

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[14] The *Madrid* court found constitutionally inadequate medical and mental health care, a pattern of excessive force by correctional staff, housing conditions that constituted cruel and unusual punishment for mentally ill prisoners, and unconstitutional procedures used to place alleged gang members in segregation.

[15] This Court has made clear that a § 1983 plaintiff may recover damages for the mental and emotional distress caused by a denial of procedural due process, even if the substantive result would have been the same absent the due process violation. *Carey v. Piphus*, 435 U.S. 247, 263-64 (1978). Of course, such damages must be proven in the usual manner. *Id.* In any event, a denial of procedural due process always entitles the plaintiff to nominal damages, even absent any evidence of actual injury. *Id.* at 266-67. *See, e.g., Powell v. Ward*, 643 F.2d 924, 934 (2d Cir.), *cert. denied*, 454 U.S. 832 (1981) (affirming award of nominal damages for defective prison disciplinary proceedings); *Morgan v. Ward*, 699 F. Supp. 1025, 1045 (N.D.N.Y. 1988) (awarding nominal damages for due process violation in prison disciplinary proceedings). Moreover, in an appropriate case, punitive damages would also be available. *See Smith v. Wade*, 461 U.S. 30, 56 (1983); *see also id.* at 55 n. 21.

Petitioners concede, as they must, that a denial of procedural due process is an independently compensable injury. Brief of Petitioners at 17.

[16] This is the posture in which amicus Gotcher now finds himself. *See* Respondent's Brief in Opposition, *Wood v. Gotcher*, No. 95-1385, at 4.

II. A STATE PRISONER NO LONGER IN CUSTODY MAY SEEK DAMAGES FOR LOSS OF GOOD TIME CREDITS IN AN ACTION UNDER § 1983

This Court has never had occasion to address directly the situation of a former state prisoner, no longer in custody, who seeks to challenge on due process grounds a prison disciplinary proceeding that resulted in a loss of good time credits, and therefore in a lengthening of his confinement.[16] However, it is clear that *Heck* permits a person in these circumstances to seek damages under § 1983 for the wrongful deprivation of good time.

A. A § 1983 Damages Action By a Person Who Has Completed His Sentence Cannot Result in Restoration of Good Time Credits.

Under *Heck*, a damages action for unlawful disciplinary procedures is not barred unless success in that action would necessarily result in a restoration of good time credits. *See* § I, *supra*. The rationale of *Heck* is that an action that would result in restoration of good time "call[s] into question the lawfulness of the plaintiff's continuing confinement," 114 S. Ct. at 2370, and therefore must proceed by habeas corpus. *See Miller*, 75 F.3d at 331 ("The reasoning of *Heck v. Humphrey* is that a prisoner should not be able to use a suit for damages to get around the procedures that have been established for challenging the lawfulness of continued confinement"); *Sheldon*, 83 F.3d at 233 ("The [*Heck*] Court reasoned that a prisoner should not be able to use a suit for damages to avoid established procedures, like habeas corpus, for challenging the lawfulness of the fact or length of confinement").

However, when a prisoner has completed his sentence, there is no way that he can gain restoration of his good time credits, or otherwise "call into question the lawfulness of [his] continuing confinement." Therefore, under these circumstances, *Heck* does not bar an action for damages for wrongful deprivation of good time.[17]

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[17] Indeed, such an action would not be barred even by the rule proposed by petitioners. Since a prisoner who has completed his sentence cannot gain restoration of forfeited good time credits, no action filed by such a prisoner "could also support a claim for restoration" of such credits. *See* Brief of Petitioners at 12; *see also id.* at 28 n. 19.

B. A § 1983 Damages Action is the Only Federal Remedy for a Former Prisoner Who Was Deprived of Good Time Credits in Violation of His Federal Constitutional Rights.

It is clear that a person who has completed his sentence is not "in custody," and therefore cannot seek habeas relief under 28 U.S.C. § 2254. *See Heck*, 114 S. Ct. at 2379 (Souter, J., concurring in the judgment). It is also clear that, once a person has completed his sentence, good time credits that were forfeited during his incarceration are irretrievably lost. Therefore, unless he can bring a damages action under § 1983, such a person will have no federal remedy, even if the prison disciplinary proceeding involved flagrant and intentional violations of his federal rights and resulted in a wrongful lengthening of his confinement. *See id.* at 2380 (Souter, J., concurring in the judgment).

This situation is fundamentally different from those presented in *Heck* and *Preiser*. In *Heck*, the state prisoner was still in custody. Therefore, he could (and did) challenge his conviction in a federal habeas corpus proceeding. *See* 114 S. Ct. at 2368. If successful in that proceeding, he could then have brought a § 1983 action for damages for wrongful conviction. *Id.* at 2372. Similarly, in *Preiser*, the prisoners, still in custody, could seek restoration of their good time credits through a habeas petition. *See Preiser*, 411 U.S. at 500.

By contrast, habeas corpus is not an available remedy for a person who is no longer in custody. "[T]he essence of habeas corpus is an attack by a person in custody upon

the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser,* 411 U.S. at 484.

In the absence of any possible remedy under the federal habeas statute, the plain language of § 1983 grants the former prisoner a cause of action for damages for wrongful deprivation of good time.

> [A]bsent such a statutory policy, surely the common law can give us no authority to narrow the "broad language" of § 1983, which speaks of deprivations of "any" constitutional rights, privileges or immunities, by "[e]very" person acting under color of state law, and to which "we have given full effect [by] recognizing that [§ 1983] provide[s] a remedy to be broadly construed, against all forms of official violation of federally protected rights."

Heck, 114 S. Ct. at 2380 (Souter, J., concurring in the judgment) (citations, internal quotation marks omitted).

Recognition of a cause of action in these circumstances does no violence to the notions of federal-state comity that underlie the exhaustion requirement of 28 U.S.C. § 2254. The policy embodied in that requirement is "that state courts be given the first opportunity to review constitutional claims bearing upon state prisoners' release from custody." *Heck,* 114 S. Ct. at 2373 n. 9. When a prisoner has completed his sentence, and seeks only damages for wrongful deprivation of good time credits that are now gone forever, this state interest is simply not implicated. *See also id.* at 2380 (Souter, J., concurring in

the judgment) (an award of federal damages is "a significantly less disruptive remedy than an order compelling release from custody").[18]

In sum, under *Heck,* a state prisoner no longer in custody may bring a § 1983 damages action for loss of good time credits, without first seeking habeas relief. For this Court to hold otherwise would be to leave persons in these circumstances without any federal remedy for violations of their federal constitutional rights.[19]

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[18] Of course, the former prisoner would be required to demonstrate the unlawfulness of the deprivation of good time credits (and therefore an unlawful lengthening of his sentence) as a prerequisite to collecting damages for that deprivation in the § 1983 action.

[19] The Court in *Heck* cited "the common-law principle that one cannot use the device of a civil tort action to challenge the validity of an outstanding criminal conviction." 114 S. Ct. at 2374 n. 10. However, this principle has no application in the case of a former prisoner seeking damages for a loss of good time credits, since it is well established that "[p]rison disciplinary proceedings are not part of a criminal prosecution." *Wolff,* 418 U.S. at 556. Indeed, this Court has recognized that the lack of procedural formality in prison disciplinary proceedings renders such proceedings more vulnerable than state court judgments to attack in civil rights actions. *See Cleavinger v. Saxner,* 474 U.S. 193, 205-06 (1985) (members of prison disciplinary committee are not entitled to absolute judicial immunity in *Bivens* action). More fundamentally, while this Court has stated that the common law of torts "provide[s] the appropriate starting point" for analysis of damages issues under § 1983, *Carey,* 435 U.S. at 258, the Court simultaneously recognized that the analogy is not always a useful one: "The purpose of § 1983 would be defeated if injuries caused by the deprivation of constitutional rights went uncompensated simply because the common law does not recognize an analogous cause of action." *Id.*

III. A STATE PRISONER MAY SEEK PROSPECTIVE INJUNCTIVE RELIEF REGARDING PRISON DISCIPLINARY PROCEDURES UNDER § 1983

In *Wolff v. McDonnell*, 418 U.S. 539 (1974), a state prisoner filed a complaint under § 1983, challenging disciplinary proceedings that resulted in the taking of good time credits and seeking, *inter alia*, prospective injunctive relief. *See* § I.A., *supra*. This Court held that the claim for prospective injunctive relief from allegedly unconstitutional procedures was properly brought under § 1983. 418 U.S. at 554-55.

Amici recognize that although *Heck* specifically reaffirmed *Wolff's* holding that damages are available for use of unconstitutional disciplinary procedures, it did not discuss the availability of prospective injunctive relief to change such procedures. That omission, however, is easily understood. The prisoner in *Heck* sought no injunctive relief, so the issue was simply not before the Court. *See Heck*, 114 S. Ct. at 2368.

What is far more significant is that neither *Heck* nor any other decision of this Court has ever deviated from the holding in *Wolff* that a claim for prospective injunctive relief from unconstitutional prison disciplinary procedures is properly brought under § 1983.[20] Such a claim,

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[20] This is so whether the claim is brought by an individual prisoner or as a class action. Contrary to petitioners' contention (*see* Brief of Petitioners at 9, 32-34), there is no indication in *Wolff*, or in any other decision of this Court, that the propriety of the claim under § 1983 turns on the presence or absence of class certification. *See* 418 U.S. at 553-55. It is the nature of the claim that governs, not the number of prisoners on whose behalf it is brought.

like a claim for damages for using the wrong disciplinary procedures, "[does] *not* call into question the lawfulness of the plaintiff's continuing confinement." *Heck*, 114 S. Ct. at 2370 (emphasis in original).[21]

The importance of prospective injunctive relief is illustrated by the case at bar. Respondent alleges not only that his own disciplinary hearing failed to comply with the requirements of due process, but that prison officials are engaged in a pattern of intentional misconduct with regard to such hearings. *See* Pet. App. I-4, ¶¶ 16-18. If prospective injunctive relief were not available under § 1983, federal courts would be completely powerless to

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[21] Petitioners make much of the fact that respondent amended his complaint to omit his claim for restoration of good time credits, characterizing this action as "manipulation" and "abuse of § 1983 jurisdiction." Brief of Petitioners at 21. Petitioners do not explain why it is manipulative or abusive for a litigant to omit a claim once he has learned, as respondent did here, that the claim cannot lawfully be brought in the pending action. Petitioners' indignation is especially incomprehensible where, as here, the initial complaint was filed *pro se*, and the amended complaint was filed by counsel. *See* Pet. App. at H-33, I-10. Indeed, the filing of an amended complaint under these circumstances is entirely consistent with counsel's professional responsibility as an officer of the court.

halt even the most deliberate and egregious violations of federal constitutional rights.[22]

CONCLUSION

For all the reasons set forth above and in the Brief of Respondent, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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[22] A claim for prospective injunctive relief from unconstitutional disciplinary procedures is in essence no different from a claim for prospective injunctive relief from other unconstitutional conditions of confinement. There is no dispute that such claims are properly brought pursuant to § 1983. *See, e.g., Helling v. McKinney*, 113 S. Ct. 2475 (1993).